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REGULATORY
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July 22, 2002
EXECUTIVE SECRETARY

Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: Petition to Suspend BellSouth Tariff No. TN2002-01 and to Convene a
Contested Case Proceeding.

Docket No: 02-00740

Dear Chairman Kyle:

Enclosed please find the original and fourteen copies of a Petition to Suspend Tariff and
to Convene a Contested Case on behalf of CLEC Coalition in the above-captioned proceeding.
A \$25.00 is enclosed for the filing fee. Please contact me with any questions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

HW/CW

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: PETITION TO SUSPEND)
BELLSOUTH TARIFF NO. TN2002-01 AND) DOCKET NO. _____
TO CONVENE A CONTESTED CASE)
PROCEEDING)

**CLEC COALITION PETITION TO SUSPEND TARIFF AND TO CONVENE A
CONTESTED CASE PROCEEDING**

BACKGROUND

The CLEC Coalition¹ submits the following petition requesting that the Tennessee Regulatory Authority ("TRA") suspend the above-captioned tariff and open a contested case proceeding to investigate whether the tariff is just and reasonable and consistent with state and federal law.

BellSouth Telecommunications, Inc. ("BellSouth") has filed a proposed "SWA [switched access] Contract Tariff" which is scheduled to become effective on July 29, 2002. It is unlike any tariff ever filed in Tennessee. The tariff addresses BellSouth's "access charges," which are the charges paid by long distance carriers to compensate BellSouth for originating and terminating long distance calls.² Such charges constitute a significant proportion of the total cost of a long distance call and, therefore, have a significant influence on long distance rates.

¹ At this time, the Coalition members are Birch Telecom, Inc and AT&T Communications of the South Central States, Inc.

² When a customer dials a long distance call, the customer's local telephone company first delivers the call to the customer's long distance carrier. The long distance carrier pays "originating" access charges to the local carrier for delivering the call. Similarly, at the other end of the call, the long distance carrier pays "terminating" access charges to compensate the receiving party's local carrier for delivering the call to its final destination.

Until the filing of this proposed tariff, BellSouth has always charged all long distance carriers the same access charges. Now, BellSouth has proposed -- for the first time -- to charge some long distance carriers more than others for originating and terminating calls. Specifically, the proposed tariff will allow BellSouth to enter into a special contract with an as yet unnamed long distance carrier with whom BellSouth has apparently been in negotiations. Under that contract, BellSouth will reduce access rates for that unnamed carrier by up to 35% while, at the same time, continuing to charge the regular tariffed rates to all other long distance carriers, including those which have the same amount of usage as the unnamed contract carrier.

APPLICABLE LAW

BellSouth is required by state law to provide "non-discriminatory interconnection" to its network "under reasonable terms and conditions." T.C.A. § 65-4-124. Furthermore, when BellSouth proposes to "change or alter any existing classification" of customers, BellSouth has the burden of proving that such changes are "just and reasonable." T.C.A. § 65-5-203(a).

BellSouth's proposed tariff is discriminatory on its face. It applies, for example, to a long distance carrier which has, during the first year of the contract, total local switching minutes of not less than "216,442,537" and not more than "281,375,299" minutes.³ For reasons not explained, the discounts "are not applicable to any usage levels outside" of that range. See Section E26.1.5 of the proposed tariff. Furthermore, the contract is written so that the discounts apply only if the carrier's minutes of use are steadily increasing. A carrier which has the same

³ The specificity of these numbers clearly indicates that the tariff is designed for one, particular long distance carrier and is not intended for use by other carriers.

total number of minutes as the "contract" carrier but does not have annual growth could not take advantage of these discounts. *Id.*⁴

The Tennessee Attorney General has recently advised the Tennessee Regulatory Authority that the agency has "the statutory duty to ensure that special contracts are allowed only when special circumstances justify a departure from the general tariffs." Furthermore, the agency "must also ensure that any special rates is realistically and in practice made available to all customers who are similarly situated. Letter from Paul Summers to David Waddell, May 31, 2002, at p. 4. Nothing in BellSouth's filing purports even to describe, much less "establish," what "special circumstances" are present in this case to justify a departure from the general access tariffs.⁵ The mere fact that one carrier has apparently negotiated a special access rate does not constitute sufficient reason for approval of that special contract. As the Attorney General noted, "Tennessee law does not allow a regime of special rates or discriminatory discounts negotiated by each customer having sufficient bargaining power to command special treatment." *Id.* Tennessee law, in other words, "does not allow" the type of special contract BellSouth has proposed in this tariff.

REQUESTED RELIEF

⁴ In other words, the proposed tariff is not a "volume discount," as it is described in BellSouth's "Executive Summary," but a "growth" discount. Such growth discounts have been explicitly rejected by the FCC. *LEC Pricing Flexibility Order* (FCC 99-206, 14 FCC Rcd 14,221, ¶¶ 134-135 (1999)).

⁵ The Attorney General's letter addresses the legality of special contracts between BellSouth and end users and recognizes that, under limited circumstances, "the existence of competition . . . may be a factor in determining whether a special rate is permissible." *Id.*, at 4.

But even that limited exception appears inapposite to BellSouth's proposed tariff. If BellSouth is a customer's local service provider and that customer makes (or receives) a long distance call, the long distance carrier has no choice but to use the facilities of BellSouth to reach that customer and no option but to pay BellSouth originating (or terminating) access charges.

Unless the Authority acts, BellSouth's proposed tariff will automatically become effective on July 29, 2002. Given the unusual nature of this tariff and the serious legal and policy questions the tariff raises, the Petitioners strongly urge the Authority to exercise its statutory power under T.C.A. § 65-5-203(a) to suspend the tariff pending further investigation and to require BellSouth to prove -- in an evidentiary hearing -- that "special circumstances" justify departure from the general access tariffs and the non-discriminatory regulatory principles that have governed the application of access charges for nearly two decades.

Therefore, pursuant to T.C.A. § 65-5-203(a) and the rules of the TRA, the Petitioners submit the following:

1. Petitioner AT&T Communications of the Southern States, LLC ("AT&T") is located at 1200 Peachtree Street, NE, Suite 8100, Atlanta, Georgia 30309.

Petitioner Birch Telecom of the South, Inc. ("Birch") is located at 2020 Baltimore Avenue, Kansas City, Missouri 64108.

2. Each Petitioner is authorized to provide, and does provide, intrastate long distance telephone service in Tennessee and purchases switched access services from BellSouth.

3. BellSouth is located at 333 Commerce Street, Suite 2101, Nashville, Tennessee, 37201-3300.

4. BellSouth is authorized to provide, and does provide, local telephone service in Tennessee, including switched access services.

5. BellSouth's proposed "SWA Contract Tariff No. TN 2002-01" is unjust, unreasonable, discriminatory, and anti-competitive in violation of state law.

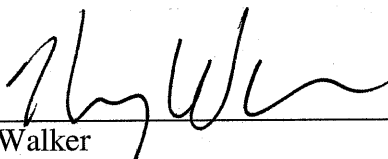
6. The TRA has jurisdiction over this matter pursuant to T.C.A. §§ 65-5-203(a), 65-5-210(a), 65-4-117(l), 65-4-124, and 65-5-208(c).

7. Petitioners request that the TRA, pursuant to its statutory authority, suspend BellSouth's proposed SWA Contract Tariff No. TN2002-01 and open a contested case proceeding to address the issues raised in this Petition and to take whatever additional action is warranted by the evidentiary record and applicable law.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 22 day of July, 2002.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300



Henry Walker